

MAR 1 1984

US EPA RECORDS CENTER REGION 5



514398

MEMORANDUM

SUBJECT: Reilly Tar Negotiations

FROM: Robert Leininger

TO: Schaefer, Ullrich, Gade

1/24/84

I met with Steve Shakman this afternoon and explained the various changes which I thought were needed in his draft consent decree. (This is the same one I had circulated in our office earlier with my comments). He was amenable to making the suggested changes and we managed to get them all incorporated into the final version by the end of the day.

1/25/84

Before meeting with Reilly on this day we had a strategy session involving Region V, HQ, DOJ and the State. We agreed that the focus of the meeting today was to go over the Remedial Action Plan (RAP) with Reilly Tar and determine how much of it they would be willing to do. Although some elements of the RAP are negotiable we agreed that we wouldn't consider any modification of the RAP until Reilly definitely agrees to perform all or part of the RAP.

1/25/84 Negotiations

The primary purpose of the session this afternoon was to walk Reilly Tar through the RAP so that they could see what the U.S. and State considered to be the appropriate remedy for the site. After the RAP had been fully explained we received the following comments:

Carl Lesker (vice president and chief in-house technical representative)

- If the government is looking for Reilly to pay for the entire project, we have nowhere to go. Since the City agreed to hold Reilly harmless, the City should at least pay a major share.

-The RAP appears to fairly cover the remedies which the U.S., the State and Reilly had been discussing over the past two months.

-Since Superfund has provisions for "cost effectiveness" the government has a mandate to adhere to that concept.

Robert Pollak (general counsel for Reilly Tar)

-If Reilly Tar refuses to implement the RAP, who will do it? (Answer: "We will, and sue you for reimbursement").

-The RAP is an important contribution to the negotiations and gives us a basis for tomorrow's discussion. Nothing is "non-negotiable" from Reilly's standpoint.

-The government may have to settle for a "chevy" rather than a "cadillac".

-Reilly Tar wants it understood that all parties have a share in paying for the remedy. (Answer: "We consider Reilly Tar responsible for the cleanup. If you want the City to pay a share you'll have to discuss that with them").

1/26/84 Negotiations

The focus of this meeting was to hear Reilly Tar's comments on the RAP. Carl Lesher did all of the talking for the company. His comments were as follows:

-Generally they have no problems with the monitoring programs as proposed.

-If well 105 is found to contain less than 280 parts per trillion total carcinogenic PAH, then the monitoring in the Mt. Simon/Hinckley aquifer should be greatly reduced.

-The monitoring in the Ironton/Galesville and St. Peter aquifer is acceptable.

-They have conceptual agreement with the need to monitor the Drift/Platteville aquifer but only for the purpose of tracking the plume and the gradient control well system.

-The proposed well abandonment program is not necessary.

-Reilly Tar agrees that the swamp area should be fenced, de-watered or filled in.

- Granular activated carbon (GAC) treatment for wells 10 and 15 in the Prairie du Chien/Jordan aquifer is not necessary.

The last comment relative to GAC raised a storm of protest from the government side of the table. During the previous meeting with federal and state technical people Lesher had conceded to the position that GAC would have to be put in. After this all was pointed out to him, Lesher agreed that GAC would have to go in to treat the wells but he didn't agree that Reilly should do it. We then agreed to meet again the following Tuesday, 1/31 at which time Reilly was to come forward with a settlement proposal to address all of the environmental concerns set forth in the RAP.

1/31/84 Negotiations

The purpose of this session was for Reilly Tar to present a settlement proposal to the U.S. and the State. Rob Pollak began by saying that all parties should work together to overcome their litigation attitudes and that Reilly is prepared to make a clear commitment to a significant contribution toward resolving the problems. Carl Lesher then set forth Reilly Tar's proposal, wherein they would:

- Provide the capital costs of GAC and the 1st year of O and M; the city would have to provide the rest of the O and M.
- Provide capital costs and one year of O and M for the Prairie du Chien/ Jordan gradient control well system.
- Provide capital costs for monitoring wells in the St. Peter and one year of O and M.
- Provide capital costs for monitoring wells in the Drift/ Platteville and one year of O and M
- Provide "outyear capitalization", i.e. replacement of equipment .

Lesher also stated that pumping and treating wells 103 and 105 is "unnecessary" but Reilly will pay for sealing and closing them. Reilly will not pay for monitoring the Mt. Simon/Hinkley or the Ironton/Galesville aquifers.

Jay Heffern responded to this proposal by saying that it was a step in the right direction but that Reilly failed to address the contingencies (eg. what if monitoring wells show that a problem is developing) and past costs. Pollak said that he needs to know whether Reilly could pay a sum certain and then be fully released. Leininger responded that the sum would have to be large enough to cover all contingencies on a worst case basis.

It's much preferable from the federal standpoint to have the defendant agree to do the performance pursuant to a consent decree rather than to have a "buyout".

Heffern stated that the MPCA has \$3 million in past costs which is a negotiable figure. The elements of the RAP are not negotiable. Paul Bitter stated that the United States has about one million in Superfund costs, \$700,000 in staff and administrative costs and about \$300,000 in litigation costs to date. Leininger stated that administrative, staff and litigation costs may be negotiable but Superfund costs are not negotiable.

Leshar said that the parties are not that far apart on a total settlement package. He said that he had to talk to management in Indianapolis and that the next day he would come back with a better offer which ought to settle the case if the government could be reasonable and show some movement as well.

2/1/84 Negotiations

Carl Leshar said that he spoke with his management in Indianapolis and that he was prepared to offer a final bottom line settlement proposal which would cover all of the elements of the RAP, the contingencies and the past costs. He said that beyond what Reilly had proposed on 1/31, the company would be willing to pay the sum of \$850,000 twenty five years after entry of the consent decree to cover future contingencies. Such amount would cover 50% of the capital and O and M costs for gradient control in the Ironton/Galesville and additional gradient control which could be needed in the Prairie de Chien/Jordan. It would not cover any contingency for the St. Peter aquifer. In addition, Reilly Tar would pay one million to the U.S. and State to divide between themselves for past costs.

Heffern said that this proposal represents a significant movement on the part of Reilly Tar. He stated that the State cannot agree to a buyout for contingencies such as the one suggested by Reilly Tar. Leininger reiterated that the United States could not accept a partial payment in a buyout settlement relative to contingencies.

Jim Brimeyer, city manager for the city of St. Louis Park then stated that the city could not pick up the type of costs that Reilly Tar was proposing.

Leshner said that his offer is the final offer Reilly Tar is willing to make toward settlement. Heffern said that the offer just wasn't good enough for the state to accept in complete settlement of this case. Leininger said the United States held the same position. The negotiations were, therefore, terminated.

Conclusion

It appears that Reilly Tar actually believed that it had a good possibility of settling this case with the proposal set forth above. They hoped to get by with paying for the capital costs of the remedial action and have the City pay for all but the first year of O and M. They also felt that both the U.S. and the State would drop most of their expenses. I don't think we can expect another offer from Reilly Tar unless it should come on the eve of trial. The case attorneys will meet in Minneapolis on 1/24 to discuss the strategy for bringing this case to trial at the earliest possible date.

cc: Paul Bitter

